

**STATE OF HAWAII**  
**Department of Land and Natural Resources**  
**Office of Conservation and Coastal Lands**  
**Honolulu, Hawaii**

April 13, 2006

REF:OCCL:DH

CDUA MA-3035B

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Second Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR)

**APPLICANT:** Ronald Kotoshirodo for Vicki L. McCarty, American Savings Bank Tower, 1001 Bishop Street, Suite 987, Honolulu, Hawaii 96813-3518

**LANDOWNER:** Vendor Eugene and Delores Ferrari, P.O. Box 12195, Lahaina, Hawaii, 96761  
Vendees James R. McCarty and Victoria L. McCarty, 2530 Kekaa Drive, B-6, Lahaina, Hawaii, 96761

**LOCATION/** Honokohau, Island of Maui

**TMK:** (2) 4-1-002:008

**AREA OF PARCEL:** 1.52 Acres

**SUBZONE:** Limited

**BACKGROUND:**

On November 16, 2001, the Board of Land and Natural Resources (Board) denied Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR) located at Honokohau, Island of Maui, Subject Parcel TMK: (2) 4-1-002:008.

Subsequently, a petition for Contested Case MA-02-03 was filed on November 20, 2001. Between 2001 and 2004, the Department of Land and Natural Resources (DLNR) processed the Contested Case.

On August 13, 2004, the Board released the ORDER GRANTING PETITIONER'S REQUEST FOR A CONSERVATION DISTRICT USE APPLICATION PERMIT TO BUILD A SINGLE FAMILY RESIDENCE ON TMK: (2) 4-1-002:008 (**Exhibit 1**).

On March 21, 2005, the McCarty's requested a one (1) year time extension to initiate construction of the SFR (**Exhibit 2**).

On April 21, 2005, the Office of Conservation and Coastal Lands (OCCL) processed a time extension of one year to initiate construction. The new date to initiate construction was August 13, 2006, and to be completed by August 13, 2007 (**Exhibit 3**).

On May 26, 2005, an attorney for the legal owners of Subject Parcel TMK: (2) 4-1-002:008, Eugene A Ferrari and Dolores E. Ferrari, wrote to the OCCL and also asked for a time extension (**Exhibit 4**).

On June 3, 2005, the OCCL wrote back and noted that a time extension to initiate construction had already been approved (**Exhibit 5**).

On February 17, 2006, the department received a letter from Ronald Kotoshirodo, a Chapter 7 trustee for Vicki L. McCarty. He noted Mrs. McCarty's bankruptcy schedules a list of \$226,048.17 as owed to unsecured creditors, and the subject parcel is the only asset available in the estate that may be liquidated to pay all or part of Mrs. McCarty's unsecured creditors.

Mr. Kotoshirodo in his capacity of trustee is requesting that the DLNR grant a one (1) year time extension of the deadline to initiate and complete construction due to: 1) demonstrate the value of the subject parcel will not decline as a result of the expiration of the deadline for initiating construction of the SFR on August 13, 2006; 2) obtain an extension to maximize the fair market value of the property and maximize the chances that the property can be sold for a sum sufficient to pay Mrs. McCarty's unsecured creditors from her 50% interest; 3) the sale through the MLS system and experienced brokers would receive a greater sum than through a foreclosure action; and 4) construction industry and materials are difficult to contract and obtain (**Exhibit 6**).

#### **AUTHORITY FOR GRANTING TIME EXTENSIONS:**

The authority for granting time extensions is provided for in Section 13-5-43 (c), HAR, TIME EXTENSIONS, "time extensions may be granted by the Board upon the second or subsequent request for a time extension on a Board permit, based on supportive documentation from the applicant."

### **BASIS FOR TIME EXTENSIONS:**

A time extension may be sought when a applicant is unable to initiate a project within the stipulated time frame. The BLNR grants time extensions when an applicant demonstrates some sort of hardship or delay in completing work on the project. Moreover, the applicant should be able to demonstrate that the hardship or delay was not self-imposed and that some good faith effort has been made to complete the project.

### **DISCUSSION:**

Staff notes the applicant is asking for a second time extension of one (1) year to extend the deadlines to initiate and complete construction. Staff assumes the deadline per Mr. Kotoshirodo's request to initiate construction would now be August 13, 2007, and to complete construction would be August 13, 2008.

The applicant notes the first time extension was requested because of: 1) the State Department of Transportation (DOT) purchase/condemnation of a portion of the parcel; 2) the original contractor moved on to another job; and 3) the Asia tsunami affected materials for construction. Despite these delays (which seemed reasonable at the time), a one-year time extension was approved to initiate construction by August 13, 2006, and construction was to be completed by August 13, 2007.

However, staff is not agreeable to a second time extension of one (1) year to initiate construction (August 13, 2007), and to complete construction (August 13, 2008).

Staff notes the request for a second time extension is the result of Mrs. McCarty's Chapter 7 Bankruptcy action to pay off her unsecured creditors. Her 50% interest in the property is the only asset available, which may be liquidated to pay all or part of her unsecured creditors.

Staff notes it has been a long-standing practice of the BLNR to authorize Single Family Residences, where appropriate, for landowners who wish to construct a residence for themselves and their family. In the present case, the property will be sold to pay a debt, and the extension is necessary to maximize the fair market value of the property, rather than to provide the current permittee with an opportunity to construct the approved SFR. The justification for the time extension does not appear to be related to construction delays, which is a typical reason and justification for time extensions. Staff is uncomfortable recommending approval of an extension under the circumstances. The extension has a speculative nature and staff believes that this action would create a poor precedent in the Conservation District.

Thus, we recommend that Board deny the request and further stipulate that the permit shall become null and void if construction of the SFR is not initiated by August 13, 2006, and completed by August 13, 2007, pursuant to Section 13-5-44, REVOCATION OF

PERMITS, "in any case where a permit has failed to comply with any of the conditions contained in a permit, the Board may direct the Chairperson to revoke the permit."

Staff notes the Maui County, Real Property, Assessment Division web site indicates that the subject parcel is valued, as of March 16, 2006, at \$761,400.00. Staff talked to Mr. Gery Madriaga an Appraisal Supervisor who noted that the property value shown is the current value of the land, as is, without infrastructure (**Exhibit 7**).

**RECOMMEDATION:**

Staff, therefore, recommends the following:

That the Board of Land and Natural Resources **DENY** this request for a time extension Conservation District Use Application Permit MA-3035B, and is subject to the following condition:

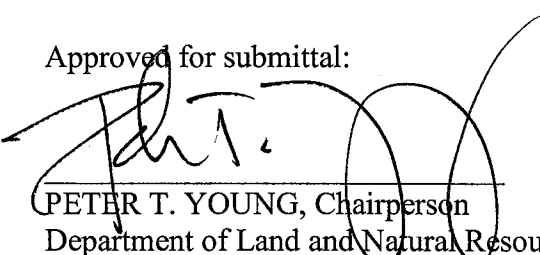
1. That the Board deny the request, and further stipulate that the Chairperson shall revoke the permit if construction of the SFR is not initiated by August 13, 2006, pursuant to Section 13-5-44, REVOCATION OF PERMITS, "in any case where a permit has failed to comply with any of the conditions contained in a permit, the Board may direct the Chairperson to revoke the permit."

Respectfully submitted,



DAWN T. HEGGER  
Staff Planner

Approved for submittal:



PETER T. YOUNG, Chairperson  
Department of Land and Natural Resources

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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FILED  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

In the Matter of the Contested Case  
Proceeding:

Petition by James R. and Victoria L. McCarty  
of the Board's November 16, 2001 Denial of  
CDUA MA-3035B to Construct a Single-  
Family Residence in the Conservation District  
at Honokohau, Kaanapali, Lahaina, Island of  
Maui, TMK (2) 4-1-02:08.

) DOCKET NO. 02-03-MA  
)  
)  
) ORDER GRANTING PETITIONERS'  
) REQUEST FOR A CONSERVATION  
) DISTRICT USE APPLICATION PERMIT  
) TO BUILD A SINGLE-FAMILY  
) RESIDENCE ON TMK (2) 4-1-02:08, AT  
) HONOKOHAU, KAA NAPALI,  
) LAHAINA, ISLAND OF MAUI.  
)  
)  
)

**ORDER GRANTING PETITIONERS' REQUEST FOR A CONSERVATION  
DISTRICT USE APPLICATION PERMIT TO BUILD A SINGLE-FAMILY  
RESIDENCE ON TMK (2) 4-1-02:08**

This matter having come before the Board of Land and Natural Resources (BLNR) on November 16, 2001 and Petitioners' Conservation District Use Application (CDUA) MA-3035B and having been denied by the BLNR, and this matter having been considered in a contested case hearing and the BLNR having denied the request, and this matter having been appealed to the Circuit Court of the Second District of the State of Hawaii and the Court having reversed the BLNR's Findings of Fact, Conclusions of Law, Decision and Order filed on December 17, 2002, and the Court having remanded this matter back to the BLNR with directions to grant the Petitioners request for CDUA permit to build a single-family residence on Petitioners' property on TMK (2) 4-1-02:08, Honokohau, Kaanapali, Lahaina, Island of Maui, and good cause appearing,

**EXHIBIT I**

**BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII**

In the Matter of a Contested Case                     )  
Regarding Appeal of Denial of                         )  
CDUA MA-3035B, for a Single-Family                 )  
Residence, at Honokohau, Lahaina,                    )  
Maui   )

DLNR File No. 02-03-MA

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the ORDER GRANTING PETITIONER'S REQUEST FOR A CONSERVATION DISTRICT USE APPLICATION PERMIT TO BUILD A SINGLE FAMILY RESIDENCE ON TMK: (2) 4-1-002:008, dated August 13, 2004, was duly served upon the following parties as indicated, by means of U.S. Mail, postage prepaid on August 13, 2004, addressed as follows:

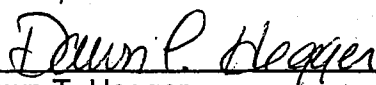
James and Victoria McCarty  
30 Kahana Place  
Lahaina, Hawaii 96761  
808-661-7293 office number  
808-669-1595 Phone  
808-669-0439 Fax

Ray Enos, Deputy Attorney General  
Linda Chow, Deputy Attorney General  
Department of the Attorney General  
Land / Transportation Division, Room 300  
Kekuanao'a Building  
465 South King Street  
Honolulu, Hawaii 96813  
808-587-2982 Phone  
808-587-0283 Fax

John Rapacz, Esq.  
P.O. Box 2776  
Wailuku, Hawaii 96793  
808-244-6955 Phone  
808-244-6956 Fax

Shari Wong  
Dep AG - Commerce and Economics Division  
425 Queen Street  
Honolulu Hawaii 96813  
808-586-1187  
808-586-1205

Dated: Honolulu, Hawaii, August 13, 2004

  
\_\_\_\_\_  
Dawn T. Hegger  
Department of Land & Natural Resources  
State of Hawaii

Based upon the Second Circuit's Order Reversing the Findings of Fact, Conclusions of Law and Decision and Order of Board of Land and Natural Resources of March 22, 2004 and the Court's Order on Appeal of December 2, 2003, and the Final Judgment of May 24, 2004,

IT IS HEREBY ORDERED that the BLNR grants the Petitioners' request for a CDUA permit to build a single-family residence as described in their Plan A and as proposed in their Final Environmental Assessment upon TMK (2) 4-1-02:08, Honokohau, Kaanapali, Lahaina, Island of Maui, Conservation District Lands. The BLNR grants the CDUA pursuant to the conditions set forth by the Circuit Court and with the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
3. The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
4. The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
5. Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

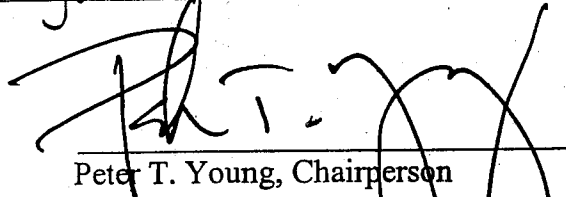
6. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
7. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
8. The applicant will minimize visual impacts to abutting landowners by using appropriate lighting, house color and landscaping. Existing trees shall be maintained to screen the structure from the surrounding lands. No mature trees shall be removed without the approval of the Department;
9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
10. Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;
11. Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
12. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
14. Cleared areas shall be re-vegetated within thirty days of the completion of construction unless otherwise provided for in a plan on file with the Department. No grubbing or grading is to occur within the landscape areas and the buffer;
15. The single-family residence shall conform to the single-family residential standards included as Exhibit 4 of the Hawaii Administrative Rules (Title 13-5);
16. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for



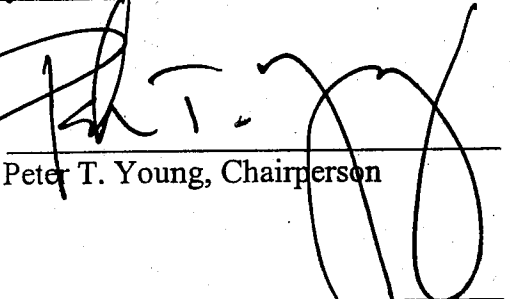
property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

17. The applicant shall comply with all applicable Department of Health administrative rules;
18. The applicant shall notify the Office of Conservation and Coastal Lands in writing upon completion, of the project;
19. All mitigation measures set forth in the application materials and in the Final Environmental Assessment for this project are hereby incorporated as conditions of the permit;
20. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
21. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
22. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
23. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
24. Other terms and conditions as may be prescribed by the Chairperson; and
25. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

DATED: Honolulu, Hawaii. August 13, 2004.



Peter T. Young, Chairperson

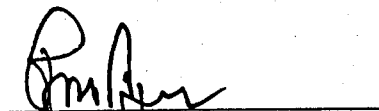


Timothy E. Johns, Member-at-Large

Kathryn W. Inouye, O'ahu Member

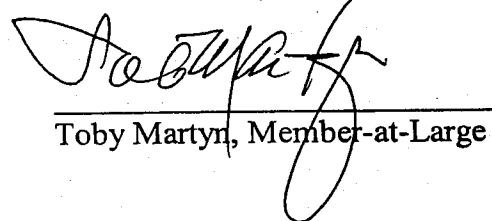


Gerald L. DeMello, Hawai'i Member



Ron Agon, Kaua'i Member

I Do Not Concur  
Ted Yamamura, Maui Member



Toby Martyn, Member-at-Large

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DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

PU

Richard McCarty  
2530 Kekaa Drive, B-6  
Lahaina, HI 96761  
(808) 661-7293 Phone  
(808) 661-7294 Fax

March 21, 2005

Mr. Peter T. Young, Director  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, HI 96809

Re: Conservation District Use Permit Application #MA-3035B  
for the McCarty Residence and Related Improvements at  
TMK (2) 4-1-02:08, Honokohau, Maui

Dear Director Young:

My wife Vicki and I are hereby requesting a one-year time extension to file our construction plans and initiate construction of our single family residence under our permit which was approved by the Board of Land and Natural Resources on August 13, 2004. We have not made previous requests for extensions for our project.

We are making this request for the following reasons:

a) The State of Hawaii Department of Transportation has given us notice that, as part of the KAHEKILI HIGHWAY RESURFACING PROJECT NO. 340D-01-93M at Honokohau, Kaanapali, Maui, Hawaii, that the Department of Transportation desires to purchase or condemn a small portion of TMK (2) 4-1-02:08. Negotiations are in progress, but have not been completed at the present time. It appears that this will be resolved sometime soon, hopefully without the need for a condemnation proceeding. It may be that our construction plans will require slight modification once the transaction with the DOT has been completed. As a result, we have held up on the preparation of our final set of construction plans for submittal to your department until our negotiations with the DOT are completed.

b) When the CDUA application was originally filed, we had arranged for a building contractor and had settled upon a construction schedule, assuming that the permit process would not be delayed. A considerable amount of time has passed since the original design of the project and, as a result, the original contractor has scheduled other work in the interim. We are trying to move ahead and re-schedule our project, but are having difficulty. As shown in the attached article, Hawaii's construction labor pool is not

large enough to meet current construction demands and, as stated in the article, this problem is even greater on Maui. As a result, it will be very difficult, if not impossible, for us to meet the current time schedule for having construction plans drawn and getting started on our home.

c) We had planned to have a large portion of our building materials shipped in from the areas which have now been drastically affected by the recent tsunami in Asia. It is uncertain when, if ever, we will be able to get those materials, so we are trying to locate comparable materials elsewhere. Since there is a backlog for obtaining construction materials of all kinds as reported in the attached article, this has caused another significant delay in the preparation of our construction plans and starting our construction which we did not expect.

Hopefully you will grant our request for a one-year time extension to file our construction plans and begin construction on our home. If you require further information concerning our present situation, please let me know, and thank you in advance for your fair and timely consideration of this request.

Very truly yours,



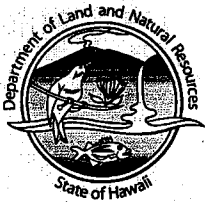
Richard McCarty

Encl.

LINDA LINGLE  
GOVERNOR OF HAWAII



PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL

Time Extension: MA 05-303

Richard McCarty  
2530 Kekaa Drive, B-6  
Lahaina, Hawaii 96761

APR 21 2005

Dear Mr. McCarty,

SUBJECT: Time Extension for the Initiation of Construction for the McCarty Single Family Residence Conservation District Use Permit Located at Honokohau, Kaanapali, Lahaina, Island of Maui, TMK: (2) 4-1-002:008

The Department is in receipt of your letter, dated March 21, 2005, regarding your request for a one (1) year time extension to initiate the construction of your Single Family Residence (**Exhibit 1**). According to your information, you are making this request for the following reasons:

- 1) As part of the Kahekili Highway Resurfacing Project, by the State Department of Transportation (DOT), negotiations are underway to possibly condemn or purchase a small portion of the subject property. You have held up the preparation of your final set of construction plans for submittal to the Department until negotiations with the State DOT are completed.
- 2) Due to the length of time to process the permit and the shortage of construction labor, it is difficult to meet the current time schedule for having construction plans drawn and implemented.
- 3) Construction materials you had planned to import from Asia have been affected by the recent tsunami and there is a backlog for obtaining comparable materials from elsewhere.

The Department notes on August 13, 2004, the Board of Land and Natural Resources approved a permit for a Single Family Residence described as "Plan A" and as proposed in a Final Environmental Assessment for TMK (2) 4-1-002:008 as ordered by the Second Circuit Court, for Contested Case MA 02-03. The permit was subject to twenty-five (25) terms and conditions. Condition # 5 notes:

EXHIBIT 3

"Any work done on the land shall be initiated within one year of the approval of such use, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed."

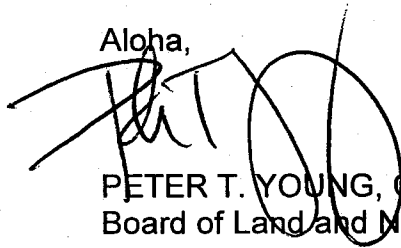
The Department notes, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant."

Therefore, the Department is granting the request for a one (1) year time extension to initiate construction for a Single Family Residence located at Honokohau, Kaanapali, Lahaina, island of Maui, TMK (2) 4-1-002:008. Construction of the Single Family Residence must commence by August 13, 2006 and construction must be completed by August 13, 2007.

All other conditions imposed by the Court ordered Board approval of Contested Case MA 02-03 shall remain in effect.

Should you have any questions regarding this matter, please contact our Office of Conservation and Coastal Lands at 587-0377.

Aloha,

A handwritten signature in black ink, appearing to read 'P. T. Young', is written over a circular stamp or seal.

PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

cc: County of Maui, Department of Planning  
Maui District Land Agent

*EXHIBIT*

JAMES P. BRUMBAUGH

BRIAN R. JENKINS

RECEIVED  
OFFICE OF CONSERVATION

Phone (808) 242-5545 • Fax (808) 243-8293 • lawmaui@maui.net

2005 MAY 27 A 11: 53

May 26, 2005

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawai'i 96809

Re: Docket Number 02-03-MA Regarding Petition by James R. and Victoria L. McCarty of the Board's November 16, 2001 Denial of CDUA MA-3035B to Construct a Single Family Residence in the Conservation District at Honokohau, Kaanapali, Lahaina, island of Maui, TMK (2) 4-1-02:08

Dear Mr. Lemmo:

I am the attorney for Eugene A. Ferrari and Dolores E. Ferrari who are the legal owners of TMK (2) 4-1-02:08. On August 13, 2004 the Board of Land and Natural Resources granted James R. and Victoria L. McCarty a permit to build a single family residence on my client's land. A copy of this CDUP is enclosed. The McCartys obtained the permit in their capacities as Vendees under an Agreement of Sale with my clients as Vendors.

The McCartys have defaulted under the Agreement of Sale and the Ferraris have filed a foreclosure action. There is a motion set for hearing before Judge August of the Second Circuit Court for June 21, 2005 at 8:30 a.m. requesting that he enter an interlocutory decree of foreclosure and appoint a Commissioner in Foreclosure. There is a great likelihood that the land will revert to my clients who have owned the land for well over ten years.

The August 13, 2004 Conservation District Use Permit, at paragraph 5, required that work be initiated within one year of the CDUP, being August 13, 2005, with building plans to be submitted and approved prior to construction.

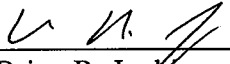
In light of the pending foreclosure and the great likelihood that my clients will remain the legal owners of the land, it is requested that the August 13, 2004 CDUP be modified so that my clients, as the legal owners, will have the same rights as the McCartys were granted to construct a single family residence.

It is also requested that paragraph 5 be modified so that construction can be initiated up to August 13, 2006. Please contact me regarding this matter. Thank you.

Samuel J. Lemmo  
May 26, 2005  
Page Two

Sincerely,  
Brumbaugh & Jenkins

Enc.

---

Brian R. Jenkins

cc. Mr. and Mrs. Ferrari



LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR - LAND

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL

Time Extension: MA 05-3035

Brian R. Jenkins  
Brumbaugh & Jenkins  
P.O. Box 640  
Wailuku, Hawaii 96793-0640

JUN - 3 2005

Dear Mr. Jenkins,

SUBJECT: Time Extension for the Initiation of Construction for a Single Family Residence  
Conservation District Use Permit Located at Honokohau, Kaanapali, Lahaina, Island  
of Maui, TMK: (2) 4-1-002:008

The Office of Conservation and Coastal Lands is in receipt of your correspondence regarding a time extension for the initiation of construction of a Single Family Residence at the subject location. On April 21, 2005, the Chairperson approved a time extension for the Court ordered Conservation District Use Permit. We have enclosed a copy of the approval for your records.

Should you have any questions regarding this matter, please contact our Office of Conservation and Coastal Lands at (808) 587-0377.

Aloha,

Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

Attachment(s)

cc: Chairperson  
MDLO  
County of Maui, Department of Planning and Permitting

EXHIBIT 5

54698

RECEIVED

FEB 17 10:01

**RONALD K. KOTOSHIRODO**<sup>06</sup>

*Attorney at Law \* A Law Corporation*

American Savings Bank Tower

1001 Bishop Street, Suite 987

Honolulu, Hawaii 96813-3518

Telephone: (808) 545-7700 \* Fax: (808) 545-7100

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

February 14, 2006

Mr. Peter T. Young, Director  
Department of Land & Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

**Re: Conservation District Use Permit Application #MA-3035B  
for the McCarty Single Family Residence and Related  
Improvements at TMK No. (2) 4-1-02:08, Honokohau,  
Kaanapali, Island of Maui**

Dear Mr. Young:

Vicki L. McCarty and her husband, James Richard McCarty, own the above-referenced property as tenants by the entirety. Vicki McCarty filed bankruptcy on October 4, 2005. I am writing to you as the duly-appointed Chapter 7 trustee for Mrs. McCarty's bankruptcy estate. By this letter, I am requesting a one-year extension of the August 13, 2006 deadline which the Department of Land & Natural Resources (the "Department") has set for the commencement of construction of a single family residence on the property.

Mrs. McCarty's bankruptcy schedules list a total of \$226,048.17 as owed to unsecured creditors. Mrs. McCarty's interest in the above-referenced property is the only asset available in the estate which potentially can be liquidated to pay all or part of Mrs. McCarty's unsecured creditors. As Chapter

Mr. Peter T. Young, Director  
February 14, 2006  
Page 2

7 trustee, the undersigned is tasked by federal law with using his best efforts to maximize payments from the estate to these unsecured creditors.

As your file on this property may indicate, the McCartys purchased the subject property from Eugene and Delores Ferrari by Agreement of Sale dated April 24, 2000. On April 8, 2005, the Ferraris initiated a foreclosure action with respect to the property since the McCartys had defaulted in making payments under the Agreement of Sale. On July 14, 2005, the Maui (Second) Circuit Court entered an interlocutory degree of foreclosure and appointed a commissioner to sell the property. Mrs. McCarty's Chapter 7 bankruptcy case was filed on October 4, 2005.

On or about December 6, 2005, the Ferraris filed a motion in the bankruptcy court to lift the automatic stay to permit them to continue and to complete the foreclosure and sale of this property. The Trustee is currently opposing the Ferraris' motion to lift stay on the grounds that the property must be sold in an orderly fashion in order to generate sufficient funds to pay the bankruptcy estate's creditors. (The amount secured by the first lien of the Ferrari Agreement of Sale is approximately \$900,000.) The Trustee proposes to retain the services of two experienced brokers who will use the MLS system and appropriate advertising to market the property outside of a court-ordered foreclosure auction.

The CDUA permit for this property, originally approved on August 13, 2004, imposed numerous conditions on the development of the property, including the condition that construction of the permitted single family residence be initiated within one (1) year of August 13, 2004 and that construction be completed within three (3) years of that date.

By letter dated April 21, 2005, your Department granted the McCartys' request for a one (1) year extension of time to initiate construction of the single family residence on the property and in that conjunction, also extended the time by which construction must be completed to August 13, 2007.

Mr. Peter T. Young, Director  
February 14, 2006  
Page 3

As trustee of Mrs. McCarty's bankruptcy estate, I am requesting that the Department grant a further one (1) year extension of the deadlines for initiating and completing construction for the following reasons:

1. To successfully oppose the Ferraris' motion to lift stay, the Trustee needs to be able to demonstrate to the bankruptcy court that the value of this property will not decline precipitously as a result of the expiration of the deadline for initiating construction of the single family residence on August 13, 2006.

2. Obtaining an extension of the deadline for initiating and completing construction will enable the Trustee to maximize the market value of the property and maximize the chances that the property can be sold for a sum sufficient to pay Mrs. McCarty's unsecured creditors from her 50% interest in the property.

3. The sale of this property through experienced brokers and the MLS listing service will realize a greater sum for the benefit of the estate's creditors than if the property is sold at a foreclosure auction. Implementing this marketing plan will be impossible if prospective purchasers cannot be assured that a single family residence can be constructed on the property.

4. The reasons stated in the earlier request for an extension still exist and it is increasingly difficult to locate building contractors, construction workers, tradespeople, and building materials and supplies on Maui. This difficulty is so overwhelming that, even if the property were sold today, it is doubtful that the buyer could commence with his construction before August 13, 2006.

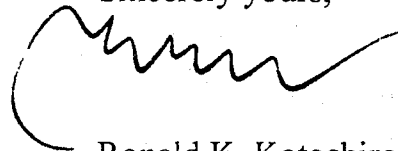
For your convenience, I enclose copies of the Department's letter dated April 21, 2005 granting the one (1) year extension of the deadlines for initiating and completing construction on the property. I also enclose a copy of the bankruptcy court order confirming my appointment as Chapter 7 trustee.

Mr. Peter T. Young, Director  
February 14, 2006  
Page 4

Vicki McCarty's husband, James Richard McCarty, fully supports my plan to market the property and by signing below, joins in this application to extend the CDUA permit construction deadlines.

Thank you for your attention to this matter. If there is any further information you require in connection with the application, or if a procedure other than this application for an extension by letter addressed to you is required, we would appreciate your notifying me to that effect.

Sincerely yours,



Ronald K. Kotoshirodo  
Chapter 7 Trustee

By signing below, I join in this application for a one (1) year extension of the deadlines for initiating (from August 13, 2006 to August 13, 2007) and completing (from August 13, 2007 to August 13, 2008) construction on the subject property.



James Richard McCarty

Enclosure

OFFICE OF THE UNITED STATES TRUSTEE

STEVEN JAY KATZMAN

United States Trustee

GAYLE J. LAU 1465

Assistant United States Trustee

CURTIS CHING 3931

1132 Bishop Street, Suite 602

Honolulu, Hawaii 96813-2830

Telephone: (808) 522-8150

Facsimile: (808) 522-8156

USTPRegion15.HI.ECF@usdoj.gov

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF HAWAII

In re

) CASE NO. 04-00748

) (Chapter 11)

GLOBAL ENVIRONMENTAL

)

SERVICES GROUP, LLC,

)

)

Debtor(s).

)

) Judge: Honorable Robert J. Faris

APPOINTMENT OF SUCCESSOR TRUSTEE

RONALD KOTOSHIRODO, Suite 987, ASB Tower, 1001 Bishop

Street, Honolulu, Hawaii 96813, (808) 545-7700 is hereby appointed as the

successor trustee pursuant to Sections 325 and 1104 of the Bankruptcy Code.

DATED: Honolulu, Hawaii, January 12, 2006.

/s/ CURTIS CHING

Office of the U.S. Trustee

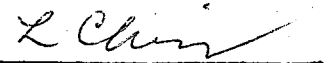
ATTEST: A True Copy

MARK VAN ALLSBURG

Clerk of the Bankruptcy Court

District of Hawaii

By



Deputy

HN026

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII**

**Case No. 05-03091**

**Chapter 7**

In re:

Victoria Lynn McCarty  
aka Vicki L. McCarty  
P.O. Box 12245  
Lahaina, HI 96761

Social Security No.:  
xxx-xx-8049

Employer's Tax I.D. No.:

**NOTICE OF APPOINTMENT  
OF INTERIM TRUSTEE**

PLEASE THAT NOTICE that the following interim trustee has been appointed and the trustee's bond was fixed under the general blanket bond heretofore approved. This appointment was made at the direction of the Office of the United States Trustee, Gayle J. Lau, Assistant Trustee.

Ronald K. Kotoshirodo  
Suite 987, Pacific Tower  
1001 Bishop Street  
Honolulu, HI 96813

(808) 545-7700

**Dated: March 20, 2006**

**Address of the Bankruptcy Clerk's Office:**  
1132 Bishop Street  
Suite 250L  
Honolulu, HI 96813

**Clerk of the Bankruptcy Court:**

**Mark Van Allsburg**

Telephone number: (808) 522-8100

LINDA LINGLE  
GOVERNOR OF HAWAIISTATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCESPOST OFFICE BOX 621  
HONOLULU, HAWAII 96809PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENTAQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL

Time Extension: MA 05-303

Richard McCarty  
2530 Kekaa Drive, B-6  
Lahaina, Hawaii 96761

APR 21 2005

Dear Mr. McCarty,

SUBJECT: Time Extension for the Initiation of Construction for the McCarty Single Family Residence Conservation District Use Permit Located at Honokohau, Kaanapali, Lahaina, Island of Maui, TMK: (2) 4-1-002:008

The Department is in receipt of your letter, dated March 21, 2005, regarding your request for a one (1) year time extension to initiate the construction of your Single Family Residence (Exhibit 1). According to your information, you are making this request for the following reasons:

- 1) As part of the Kahekili Highway Resurfacing Project, by the State Department of Transportation (DOT), negotiations are underway to possibly condemn or purchase a small portion of the subject property. You have held up the preparation of your final set of construction plans for submittal to the Department until negotiations with the State DOT are completed.
- 2) Due to the length of time to process the permit and the shortage of construction labor, it is difficult to meet the current time schedule for having construction plans drawn and implemented.
- 3) Construction materials you had planned to import from Asia have been affected by the recent tsunami and there is a backlog for obtaining comparable materials from elsewhere.

The Department notes on August 13, 2004, the Board of Land and Natural Resources approved a permit for a Single Family Residence described as "Plan A" and as proposed in a Final Environmental Assessment for TMK (2) 4-1-002:008 as ordered by the Second Circuit Court, for Contested Case MA 02-03. The permit was subject to twenty-five (25) terms and conditions. Condition # 5 notes:



Richard McCarty

Time Extension: MA 05-303

"Any work done on the land shall be initiated within one year of the approval of such use, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The applicant shall notify the department in writing when construction activity is initiated and when it is completed."

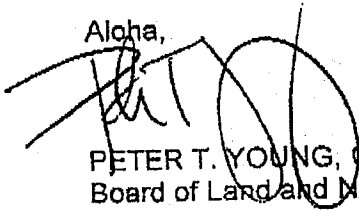
The Department notes, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant."

Therefore, the Department is granting the request for a one (1) year time extension to initiate construction for a Single Family Residence located at Honokohau, KaaNapali, Lahaina, island of Maui, TMK (2) 4-1-002:008. Construction of the Single Family Residence must commence by August 13, 2006 and construction must be completed by August 13, 2007.

All other conditions imposed by the Court ordered Board approval of Contested Case MA 02-03 shall remain in effect.

Should you have any questions regarding this matter, please contact our Office of Conservation and Coastal Lands at 587-0377.

Aloha,



PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

cc: County of Maui, Department of Planning  
Maui District Land Agent



HEI



Home Property Search

Address Account Advanced

## RECORD DETAILS

Parcel Data

Permits

Agricultural Assmt.

## ► Assessment Data

Sales

Residential

Commercial

Com. Bldg. Sections

Other Buildings

Sketch

Tax Bill

Tax Details 2005

Tax Details 2004

Tax Details 2003

Tax Details 2002

Tax Details 2001

Map

410020080000

HONOKOHAU VALLEY

FERRARI DOLORES E

## Assessed Values

1 of 1

Property Class

CONSERVATION

Land Value

\$761,400

Land Exemption

\$0

Net Taxable Land Value

\$761,400

Building Value

\$0

Building Exemption

\$0

Net Taxable Building Value

\$0

Total Taxable Value

\$761,400

Homeowner Class

Data Last Modified : 3/13/2006

## Disclaimer

The County of Maui Real Property Assessment Division makes every possible effort to produce and publish the most current and accurate information available. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

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EXHIBIT 7



HEI



Home    **Property Search**  
 Address    Account    Advanced

Account Search    41002008    Search    Se

Enter the Account #  
**WITHOUT** the island number

**Example:** Account # 2-3-9-04-98-0024 is entered as 390040980024.

Click on the parcel id in the left column for details.

Search for Account: 41002008			Results 1-
Parcel ID	Owner	Situs Address	
410020080000	FERRARI DOLORES E	HONOKOHAU VALLEY	
410020080000	FERRARI EUGENE AUGUS...	HONOKOHAU VALLEY	
410020080000	MCCARTY JAMES RICHAR...	HONOKOHAU VALLEY	
410020080000	MCCARTY VICTORIA L	HONOKOHAU VALLEY	

Results Page:

Print This

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Data Last Modified : 3/13/2006

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EXHIBIT 7